# SANITARY LEGISLATION.

## COURT DECISIONS.

### KANSAS SUPREME COURT.

**A City Ordinance Providing Stricter Regulations and Imposing More Severe Penalties than State Regulations on the Same Subject Held to be Valid.**

KANSAS CITY *v.* HENRE. (Dec. 11, 1915.)

A city ordinance which provided a higher standard for milk sold in the city than that required by the State regulations and which imposed more severe penalties for its violation than those imposed for violating the State regulations was held by the court to be reasonable and valid.

The State Board of Health of Kansas, by authority of a State law, established certain standards for milk sold in the State. The city of Kansas City, Kans., adopted an ordinance establishing a higher standard for milk sold in the city.

A dealer was convicted of selling milk which was below the standard required by the city ordinance. He asserted that the city ordinance was void because it was in conflict with the State regulations, but the Supreme Court of Kansas decided that the city ordinance was valid.

The court (Johnston, Chief Justice) said (153 Pac. Rep., 548):

"The difference in the standards fixed is not great, but it is substantial, and the question arises whether the city can prescribe higher standards and greater restrictions in the sale of milk than the State prescribes and may impose a more severe penalty for the violation of the ordinance than is annexed by the State for a violation of the statute. The power of the city in this respect is derived from the State, and is only such as is clearly conferred by statute. Kansas City has adopted the commission form of government, and the legislature has authorized such cities to enact ordinances for all named purposes not repugnant to the constitution and laws of the State. One of the purposes specifically named is to make regulations to secure the general health of the city. (Gen. Stat. 1909, secs. 1243, 1278.) The ordinance regulating the sale of milk comes clearly within the power so conferred, and, unless it conflicts with the statutes or constitution or is clearly unreasonable, it must be upheld. It is well settled in this State that, where power is conferred upon cities to enact ordinances for the preservation of peace and good order within the city or for the preservation of the health of its inhabitants, it may be exercised, although the legislature has provided State regulations on the same subjects. (Franklin *v.* Westfall, 27 Kans. 614; Monroe *v.* City of Lawrence, 44 Kans. 607, 24 Pac. 1113, 10 L. R. A. 520; In re Thomas, Petitioner, 53 Kans. 659, 37 Pac. 171; In re Jahn, Petitioner, 55 Kans. 694, 41 Pac. 956; Assaria *v.* Wells, 68 Kans. 787, 75 Pac. 1026.) An ordinance may not be enacted which conflicts with or will operate to nullify the State law. (Assaria *v.* Wells, supra; In re

Van Tuyl, 71 Kans. 659, 81 Pac. 181.) A city may not by ordinance authorize that which a statute prohibits, nor punish the doing of an act which the statute expressly authorizes, but, as we have seen, it is competent for a city, under the authority of the legislature, to provide that an act shall be an offense against the authority of the city, although the same act is made an offense against the State. An ordinance enacted in the exercise of the police power is not necessarily inconsistent with a State law on the same subject because the city provides for greater restrictions or makes higher standards than is provided or made by the statute. (Walker *v.* Railway Co., 95 Kans. 702, 149 Pac. 677.) Nor is an ordinance repugnant to a statute merely because the penalty prescribed is greater than is fixed by the statute for the commission of a like offense. (Minneola *v.* Naylor, 84 Kans. 147, 113 Pac. 309; Stark *v.* Geiser, 90 Kans. 504, 135 Pac. 666.)

"It is argued that regulations of the kind in question should be uniform, and that there is no good reason for prescribing different standards of milk in a city than is generally provided for the people of the State. As was noted in Walker *v.* Railway Co., supra, it may be necessary to make additional requirements and stricter regulations and to impose more severe penalties in a congested district like a city than are made and enforced in a rural district. In Town of Neola *v.* Reichart, 131 Iowa, 492, at pages 497, 109 N. W. 5, at page 7, this question was under consideration, and it was held that municipalities are warranted in making other and greater restrictions than are provided for the State at large.

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"There is a conflict in the authorities on the question involved here; but, under the view which has been taken in this State, the additional regulations and the superadded penalties are not repugnant to the State statute, nor can they be deemed to be unreasonable. * * *"